

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
4/7/2015

Entered: March 18, 2015

CASE NO. 14-1521-PSD-S-C

BRENDA STANLEY,
McConnell, Logan County,

Complainant,

v.

LOGAN COUNTY PUBLIC SERVICE DISTRICT,
a public utility, and CITY OF LOGAN SANITARY
BOARD, a municipal utility,

Defendants.

RECOMMENDED DECISION

This Order requires the City of Logan Sanitary Board to use its best efforts to secure financing for a sewer project in McConnell and provide sewer service to McConnell as soon as the funding is available; requires the City to file annual progress reports; and dismisses the case.

PROCEDURE

On August 25, 2014, Brenda Stanley (Complainant) filed a formal Complaint against the Logan County Public Service District (District) and the City of Logan Sanitary Board (City). The Complainant stated that a sewage drainage box next to her residence is full and overflowing raw sewage into an open ditch. The Complainant stated that the problem has existed for fourteen months and residents of the community are getting sick from the toxic gases being released from the raw sewage. The Complainant requested to have the sewage box cleaned so it would not overflow.

On September 3, 2014, the City filed its Answer denying responsibility and stating that it is unable to provide any relief to the Complainant. Attached to the Answer was a correspondence from the City's Engineer outlining how a temporary solution that was proposed by Commission Staff would not be feasible for the City.

On September 5, 2014, the District filed its Answer denying any responsibility for the sewer pipe or system that is the subject of the Complaint. The District stated that it entered into an Agreement with the City of Logan that designated the City as the responsible party to serve the area in question. Attached to the Answer was a copy of the Agreement that was approved by the Commission in Case No. 00-1469-PSD-CN.

On September 24, 2014, Commission Staff filed its Initial Joint Staff Memorandum. Commission Staff noted that any work performed on the area at issue would involve right-of-way issues with CSX Corporation, Inc. (CSX) and the West Virginia Division of Highways. Commission Staff stated that it would continue to investigate the case.

On October 7, 2014, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before March 23, 2015.

On November 24, 2014, Commission Staff filed its Final Joint Staff Memorandum. Commission Staff stated that the City had a project planned for the affected area and that part of the design work has been completed, but much work is left to be done. Technical Staff stated that the Logan County Commission is the only available funding source to fund any temporary remedial activity; however, the County Commission will not act unless there is an order requiring the City to complete a sewer project in the area, thereby making the City the responsible party for the future project. Technical Staff met with the West Virginia Department of Environmental Protection (DEP) to discuss the type of order the DEP would require to allow action to remedy the issues in McConnell. While the DEP cannot issue a permit for a temporary solution, it can acknowledge that the sewage has drained to the River for years as an existing condition and, if that is coupled with an order to the City to provide service to the area at some point in the future, it would remove any liability from the County Commission if it funds a temporary solution. Staff recommended the City be made a party with this case as the entity responsible for the final resolution. Additionally, Commission Technical Staff made the following recommendations:

1. The Complainant should collect signatures from the residents of McConnell on a petition to request sewer service for McConnell and present the petition to the City Sewer Board.
2. The City should immediately enlist the services of its Engineer to begin the application process for the necessary funds to bring sewer service to the Communities of Stollings and McConnell. The City should require the McConnell project to have a completion date no later than June 2022.

3. The Complainant should submit to the Logan County Commission a petition requesting assistance for a temporary fix to remove the open raw sewage collecting along the CSX railroad ditch after an Order from the DEP is issued.
4. The Complainant should obtain the signatures of no less than 100 McConnell area residents authorizing the formation of some type of Association formed to provide the annual maintenance needs to prevent the return of the open sewage and sewage flows in the railroad ditch.

On December 2, 2014, the City filed an objection to all of Staff's recommendations. The City objected to being joined as a party, then requested it be dismissed as a party.

On December 3, 2014, the Complainant filed a response requesting that no parties be dismissed and also the case not be dismissed.

On December 5, 2014, the District filed a Motion to Dismiss. The District maintained that the Agreement between the District and the City in Case No. 00-1469-PSD-CN provides that the area of McConnell is to be served by the City and the District bears no responsibility in this case. Additionally, the District noted that none of Staff's recommendations required any action on part of the District.

On December 12, 2014, a Procedural Order was entered denying the City's and District's requests to be dismissed and setting this matter for hearing on January 13, 2015.

On January 14, 2015, a Petition to Resolve the McConnell Sewage Issues was filed on behalf of the Complainant containing approximately 300 names and signatures.

EVIDENCE

This matter came on for hearing on January 13, 2015, at 1:30 p.m., at which time Brenda Stanley appeared, *pro se*; the District was present and represented by Mark E. Kauffelt, Esquire; the City was present and represented by H. Wyatt Hanna, III, Esquire; and Commission Staff was represented by Christopher L. Howard, Esquire.

Ms. Stanley took the stand and presented photographs depicting water run-off on and around her property. (Tr. at 14.) The water run-off consisted of both storm water as well as sewage. (Tr. at 15.) Ms. Stanley lives in McConnell and testified regarding the severity of the problem including the run-off that is washing out her yard and coming inside her basement. (*Id.*) Ms. Stanley likened her area to that of living in a third-world country due to the toxic gasses in the sewage run-off and the sewage that is ponding near her property. (*Id.*) Ms. Stanley stated that the sewage is making her and others in the

community sick. After about an hour outside, Ms. Stanley gets headaches and nauseated, and must go inside to lay down for a couple of hours. (Tr. at 18, 27.) The combined rain and sewage problem started occurring sometime in 2010. (Tr. at 20.) Ms. Stanley did not believe the City installed her current system, does not know who installed the system, and that it was there when she bought her home in 2004. (Tr. at 23-24.) Ms. Stanley has spoken to the County Commission, but it has not provided any assistance with the problem. (Tr. at 25.) Ms. Stanley has contacted the District, the City, the County Commission, Senator Manchin's office, the DEP, and the Environmental Protection Agency (EPA). (Tr. at 28.) In 2010, the West Virginia Department of Highways (DOH) paved Quest Circle, which is a street that runs behind her house. Ms. Stanley stated that the DOH did not pitch the road toward the ditch, as it was initially, but pitched the road toward the properties and, ever since, the water run-off has been an issue. (Tr. at 29-30.)

Ms. Stanley's first witness, Donetta Rainwater, lives in McConnell, very close to the area in question. (Tr. at 32-33.) Ms. Rainwater began experiencing problems with her sewage the same time as Ms. Stanley. (*Id.*) The sewage backs up into her basement and she has to have the sewage lines cleaned every two to three months. (Tr. at 33-34.) Ms. Rainwater has excavated around the front of her house to address the problem, but the problem still exists. Although, the sewage is no longer backing up in her house, it is surfacing in her yard. (Tr. at 34.) Neither Ms. Stanley nor Ms. Rainwater have a yard big enough to install a septic system. (Tr. at 29, 34.) Ms. Rainwater understands that the sewer system currently in place in McConnell pipes sewage directly into the Guyandotte River. (Tr. at 35.) The sewage odor is really bad in the summer months. (Tr. at 36.)

Ms. Stanley's next witness, Hilda Beheler, testified that she lives in Stollings and that she started experiencing problems with sewer in May 2014. (Tr. at 40.) Every time it rains, she gets three to six inches of water in her garage that backs-up through her drains. (Tr. at 41.) Ms. Beheler does not believe anyone in Stollings is hooked-up to sewer. (Tr. at 42.) Ms. Beheler lives approximately one-half mile from Ms. Stanley and stated that no one has asked her to connect to sewer service. (Tr. at 48-51.)

Ms. Stanley's last witness, Clifton Chriswell, Jr., testified that he assisted Ms. Stanley with repairing drainage pipes in her yard to help with the water run-off. (Tr. at 54-55.) Mr. Chriswell stated that kids that live across Route 10 play basketball near the sewage impoundment and when their ball goes into the sewer, they just bounce it a couple of times and keep playing. (*Id.*) In the summer, the sewer odor is unbearable and he has to stop working outside due to headaches and nausea. (*Id.*) Mr. Chriswell stated that the State road improperly installed the road on Quest Circle and it drains improperly. (Tr. at 56.) He would not take a house in that area if they gave it to him. (*Id.*)

The District's witness, Charles R. (Rick) Roberts, Jr., is a project manager for E. L. Robinson Engineering Company. Prior to that, Mr. Roberts worked for the District for approximately twenty years as its managing engineer and acting general manager. Mr.

Roberts explained the circumstances surrounding a Joint Stipulation (Stipulation) that was entered into between the District and the City on June 27, 2001, and approved by the Commission in Case No. 00-1469-PSD-CN. (Tr. at 62-63; District Ex. 1.) Paragraph Five of the Stipulation provides who would provide sewer service in Stollings, McConnell, and Dingus Run. Paragraph Five states that

The District will refrain from protesting or objecting in any way and before any court, agency, or other forum, to the City's construction of sewer collection lines in the unincorporated areas of Stollings, McConnell, Dingess Run and surrounding areas (previously known as Phase III of the District's project). The District hereby formally agrees to the entry of the City into the service territory of the District in order to provide sewer service in these areas.

(District Ex. 1, p. 2.) Mr. Roberts stated that the District does not bill or maintain the sewer lines in the area at issue and has never done any work in the area. (Tr. at 64.) After this case began, the District asked Mr. Roberts to prepare an estimate for the cost to install a force main from the Stollings and McConnell area to the District's existing waste water treatment plant, which involved crossing the river from West Logan. (Tr. at 65.) The approximate distance to install the force main is 18,000 feet and the approximate cost of the project would be \$2,360,000. (Tr. at 66; District Exs. 2 and 3.) That estimate does not include the cost to install a pump station, service laterals, and collection lines into the subdivision. (Tr. at 67, 75.) Mr. Roberts stated that he does not believe the District performing this project is a practical solution to Ms. Stanley's problem and the most cost effective way to serve the Stollings and McConnell areas would be service by the City. (Tr. at 67-68.) Mr. Roberts did not dispute that there is a health issue in the Stollings and McConnell area. (Tr. at 72.) With respect to funding for a sewer project, Mr. Roberts stated that the West Virginia Infrastructure and Jobs Development Council is about out of money. (Tr. at 75.) The District's and City's sewage treatment plants abut each other, but the City has existing lines that are close to the McConnell area that could be extended to provide service, whereas the District would have to run approximately 18,000 feet of line to provide service. (Tr. at 77.) Mr. Roberts believes the City has the financial and managerial abilities to provide service to the McConnell area. (Tr. at 78.)

The City's witness, Eric Hartwell, is employed by Dunn Engineers, Inc. which is the consulting engineer for the City. Mr. Hartwell testified that the City did not construct any of the lines in the McConnell area. (Tr. at 82.) Mr. Hartwell explained recommendations he made to the City regarding a temporary solution to the issues in this case that was proposed by James Weimer from Commission Staff. Mr. Hartwell memorialized his recommendations in a letter to Tommy Esposito from the City. (Tr. at 81; City Ex. 1.) Mr. Weimer's proposal to temporarily alleviate the back-up of sewage along the CSX railway was to install approximately 500 feet of gravity sewer line in the Stollings area. (City Ex. 1.) Mr. Hartwell described a meeting that took place regarding

the issues at McConnell. Present at the meeting were members of the Logan County Health Department, Mr. Esposito, Mr. Weimer, Mr. Stottlemeyer from the DEP, and representatives from the area of Dingess Run. (Tr. at 82-83.) Everyone agreed that a problem existed that needs addressed, but the debate was who was going to address it and when. (Tr. at 83.) Mr. Hartwell recommended the City get a permit from CSX to work in its right-of-way, even though Mr. Weimer said he contacted CSX and they said a permit would not be required. A permit would require the City to obtain a temporary insurance policy worth several million dollars. (Id.) Additionally, the installation of the line would have to cross a State highway which would cost approximately \$200,000. (Tr. at 84-85.) Mr. Hartwell recommended the line not be installed because doing so would be a direct discharge of sewer into the Guyandotte River, which he said the DEP would classify as willful pollution and subject the City to significant fines. (Tr. at 85.) Mr. Hartwell stated that the only way he would agree to the temporary solution is to have a document from the DEP that states that "this is a temporary measure and this is why it's being done." (Tr. at 85-86.) Mr. Hartwell has never seen such a document. (Id.) Mr. Hartwell stated that sewer service is available to several houses and businesses in the Stollings area and has been for six years or so. (Id.)

On cross examination by Ms. Stanley, Mr. Hartwell agreed that plans had been developed in 2006 for sewer service in Ms. Stanley's area, but funds were not available to do the work. (Tr. at 88.) The City has attempted every year to get funding and applied to the West Virginia Department of Environmental Protection State Revolving Fund, by way of getting on their priority list since the project was designed in 2006. The City currently sits at number five on that list. (Tr. at 89.) On cross examination by the District, Mr. Hartwell stated that the current sewer system in McConnell consists of a series of junction boxes and pipes that brings the sewage and the storm water off of the hill and across the road to the railroad ditch. In the ditch, the sewage runs a few hundred feet and used to go through another culvert to the river. The railroad ditch has filled up with silt and sediment and is now ponding and backing up. (Tr. at 96.) The sewer system has been in place for forty years or so and has had very little, if any, maintenance. (Tr. at 97.) The system needs cleaned out and made to drain properly; however, under heavy rain events, it will still become overloaded. The system is by no means an acceptable sanitary system today. (Id.) Mr. Hartwell believes a logical recommendation to somewhat improve the problem would be for the homeowners to form an association and raise money to clean and maintain the system themselves. (Tr. at 98.) Detailed plans were submitted to the DEP on one occasion and parts of the plans were broken apart to build the two smaller extensions in Stollings. (Tr. at 99.) The McConnell area would not be part of the next extension phase unless the whole project was funded because several other smaller projects must be completed to get to the McConnell area. (Id.) It would cost around \$12 million to provide sewer to other areas in Stollings and the McConnell area. (Tr. at 101.) The funding climate for this type of project is poor and the year 2022 would be a reasonable estimate for completion of the project; however, it could be sooner since the City is number five on the priority fact list. (Tr. at 102-103.) Mr. Hartwell believes the

residents can discharge sewer into the waters of the State with a DEP permit; the City cannot, however, since it may subject them to fines. (Tr. 105-107.)

The City's next witness, Mr. Thomas Esposito, is the chief operator at the City of Logan Sanitary Board's wastewater treatment plant. The City and Dunn Engineers discuss this issue every month at the Board meetings. (Tr. at 110.) Sewer service is available to Ms. Beheler in Stollings. (Tr. at 111.) There are at least a dozen residences and business in Stollings that are connected to sewer service. (Tr. at 112.) The sewer in McConnell is a problem, but funding is not available. (Id.) There are plans in place to provide sewer service to McConnell. (Tr. at 119.)

Commission Staff called James Weimer as a witness. Mr. Weimer works in the Commission's Engineering Division. Mr. Weimer conducted a field investigation into Ms. Stanley's Complaint and met with the various parties. Mr. Weimer contacted the DEP, the City of Logan, the District, Natural Resource Partners, who happens to be next to Ms. Stanley's home, and the Logan County Health Department to discuss possible options to address the situation in McConnell. (Tr. at 127.) Mr. Weimer viewed and took photographs around Ms. Stanley's property and, with the Health Department, traveled to another part of McConnell where there were large sewage discharges ponding in fairly large ponds all along the railroad track. (Tr. at 127-128.) The County Commission, at first, indicated they might help with the problem, however, did not because they were very concerned about what the DEP would do if the DEP discovered that they were in any way assisting with taking untreated sewage to the Guyandotte River. (Id.)

Mr. Weimer had further discussions with the DEP in an attempt to alleviate the concerns of the County Commission. The DEP informed Mr. Weimer the only option available is that there would have to be some recognition from a utility that they were going to be required to provide sewer service in the area in the future and the DEP would then acknowledge that fact in an order and document that there was existing sewage going untreated into the river. When the DEP issues the order, that would then lift the responsibility from someone who would take some remedial action to cure the current drainage issues. (Tr. at 129.) Mr. Weimer acknowledged that some do not believe that that would happen with the DEP. Mr. Weimer had a second meeting with the DEP, including its director, Mr. Mandirola, and again was reassured that the course of action is possible. (Tr. at 130.)

Mr. Weimer believes a reasonable schedule to provide sewer service for the area is sometime in year 2022. (Id.) Mr. Weimer testified regarding his conversations with the railroad's environmental people in Florida about the sewage ponding in their right-of-way and stated that CSX was very concerned about the health hazard for their personnel on the railroad in that area and that they would do whatever possible, including waive whatever permits were needed, and even assist with the removal of some of the material to get the

sewage to drain properly. CSX also informed Mr. Weimer that CSX had a place that they could dispose of the material that was removed. (Tr. at 130-131.)

Mr. Weimer also recommended the residents form an association to assist in the temporary remedial work as well as maintain the area until sewer becomes available. (Tr. at 132.) On cross, Mr. Weimer acknowledged that, even if a consent order was obtained from the DEP, there still could be fines if the conditions of the order were violated. (Tr. at 156.) All of the parties Mr. Weimer spoke with agreed that, if they are going to help, there needs to be some buy-in from the community, which is why he suggested the residents form an association and raise money to assist. (Tr. at 160.) On re-cross, Mr. Weimer stated that he was not aware that CSX has already cleaned part of the ditch line to alleviate some of the ponding. (Tr. at 169.)

DISCUSSION

Under Rule 5.5.a of the Commission's Rules for the Government of Sewer Utilities (Sewer Rules), "[a] sewer utility, whether publicly or privately owned, is under a public service obligation to extend its mains, and its plant and facilities to serve new customers within its service area who may apply for service." Rule 5.5.b provides that "[e]xtensions shall be made in all cases in which the public convenience and necessity require the service, construction problems are not unusual or burdensome, and the extensions appear to be economically feasible."

None of the parties in this case dispute that the public convenience and necessity require sewer service in the McConnell area. The system is old and non-compliant since it was designed to drain raw sewage directly into the Guyandotte River, and is now clogged causing drainage issues and raw sewage to back-up and pond near homes. It appears to be no coincidence that the water run-off and clogged pipes became an issue shortly after the DOH paved a section of roadway above the Complainant's residence. It is likely that the run-off from the roadway exacerbated the problem. The acts of the DOH, however, are not within the jurisdiction of this Commission. A determination of a plausible solution to the sewer issues in McConnell and what party is responsible for the solution is within the Commission's jurisdiction.

Neither the District nor the City designed, installed, or has maintained the sewer system that is currently in the McConnell area. Neither has either party accepted responsibility for the current sewer system in McConnell. Based upon the Joint Stipulation filed and approved in Case No. 00-1469-PSD-CN, it appears the District relinquished control of the McConnell area to the City and the City agreed to be the utility responsible for providing sewer service to that area. As such, the District bears no responsibility in this case. The City agreed to provide sewer service to the area in the future. The City has been working toward making that project a reality since at least year 2006, but funding has been an issue, thereby causing the project not to be economically

feasible at this time. The City has not argued that construction problems exist that are unusual or burdensome. To the contrary, the District provided evidence to establish that the City is the utility that is in the best position to extend its mains and provide sewer service to the residents of McConnell. The City, however, cannot be ordered to immediately provide that service if the necessary funding is not available.

Mr. Weimer was informed by the DEP on different occasions that the DEP would permit an entity to assist with a temporary solution to the issues in McConnell, as long as a utility was ordered to provide sewer service to the area at some point in the future. Based upon the Joint Stipulation, the testimony at hearing, and the City's efforts, thus far, the City has accepted the responsibility of providing service to the area in the future. Since it appears that the only way any remedial action can be taken to immediately address the sewage issues in McConnell is to require a utility to provide service in the future, the City should be ordered to use its best efforts to secure financing, from whatever sources available, for a sewer project in McConnell and complete that project as soon as the funding is available. Additionally, the City should be required to file annual progress reports, as closed entry filings, outlining its progress in obtaining financing, any work done toward the project, and a projected start date, if available.

Commission Staff recommended the Complainant and the residents of McConnell form an association to raise funds to assist in yearly maintenance of whatever temporary solution is implemented. Moreover, the parties in this case testified that the residents of McConnell would need to take ownership and assist with maintaining whatever temporary solution is implemented. In light of such, Ms. Stanley and the other residents of McConnell should create such an association, since doing so would go a long way toward garnering the assistance of an entity, such as the Logan County Commission, or possibly even the City, in providing a temporary solution to the sewer drainage and ponding issues in McConnell.

FINDINGS OF FACT

1. Brenda Stanley filed a formal Complaint against the Logan County Public Service District and the City of Logan Sanitary Board alleging that a sewage drainage box next to her residence is full and overflowing raw sewage into an open ditch. The Complainant stated that the problem has existed for fourteen months and residents of the community are getting sick from the toxic gases being released from the raw sewage. The Complainant requested to have the sewage box cleaned so it would not overflow. (Complaint, August 25, 2014.)

2. The City and the District denied responsibility for the sewage issues. (Answer, September 3, 2014; Answer, September 5, 2014.)

3. Commission Staff recommended the Complainant collect signatures from the residents of McConnell on a petition to request sewer service for McConnell and present the petition to the City Sewer Board. (Final Joint Staff Memorandum, November 24, 2014.)

4. Commission Staff recommended the City immediately enlist the services of its Engineer to begin the application process for the necessary funds to bring sewer service to the Communities of Stollings and McConnell and the City should require the McConnell project to have a completion date no later than June 2022. (Id.)

5. Commission Staff recommended the Complainant submit to the Logan County Commission a petition requesting assistance for a temporary fix to remove the open raw sewage collecting along the CSX railroad ditch after an order from the DEP is issued. (Id.)

6. Commission Staff recommended the Complainant obtain the signatures of no less than 100 McConnell area residents authorizing the formation of some type of association to provide the annual maintenance needs to prevent the return of the open sewage and sewage flows in the railroad ditch. (Id.)

7. The sewage drainage and ponding issue developed in 2010. (Tr. at 20; 32-33.)

8. The DOH paved Quest Circle behind the Complainant's house in 2010 and pitched the road toward the resident's properties. (Tr. at 29-30; 56.)

9. The sewer system in McConnell is over forty years old and has had little, if any, maintenance. (Tr. at 97.)

10. Neither the City nor the District installed or maintains the existing sewer system in McConnell. (Tr. at 64; 82.)

11. The area of McConnell had a combination storm water and sewer system that, when designed, flowed directly into a ditch beside the CSX railway and then under the railway and a State roadway, and into the Guyandotte River. (Tr. at 96.)

12. Sewage is ponding in the ditch line beside the CSX railway and in front of Ms. Stanley's home, and also backing-up in resident's basements and yards. (Tr. at 15; 33-34; 96.)

13. The sewage drainage pipe under the CSX railway and State roadway is clogged and needs cleaned to drain properly. (Tr. at 96-97; Staff Ex. 1.)

14. Residents in McConnell are getting headaches and nauseated from the gasses being emitted from the ponding sewage. (Tr. at 18; 27; 54-55.)

15. Many lots in McConnell are too small for a septic system. (Tr. at 29; 34.)

16. On June 27, 2001, the City entered into an Agreement with the District, which was approved by the Commission in Case No. 00-1469-PSD-CN, wherein the City agreed to be the utility that is responsible for providing sewer service to the area of McConnell. (Tr. at 62-63; District Ex. 1.)

17. The City developed plans in 2006 for a sewer project that provides sewer service to the areas of Stollings, McConnell, and Dingess Run. (Tr. at 88.)

18. The City has been applying for funding to sewer McConnell since 2006, and is now ranked number five on the West Virginia Department of Environmental Protection State Revolving Fund priority fact list. (Tr. at 89.)

19. The City has already provided sewer service to parts of the Stollings area. (Tr. at 85-86; 99; 111-112.)

20. It would cost approximately \$12 million to provide sewer service to McConnell and the remaining areas of Stollings. (Tr. at 101.)

21. There is currently no funding available for a sewer project in McConnell. (Tr. at 75; 102-103.)

22. Year 2022 is a reasonable projection for sewer service in McConnell, but could be sooner if funding becomes available. (Tr. at 102-103; 130; Staff Ex. 1.)

23. A temporary solution to the sewage draining and ponding issues is to unclog and repair the existing sewer lines. (Staff Ex. 1.)

24. A reasonable cost estimate of the temporary solution is approximately \$20,000. (Id.)

25. The Logan County Commission will not assist with a temporary solution until the DEP agrees to relieve it from liability for draining raw sewage into the Guyandotte River. (127-128; Staff Ex. 1.)

26. The only way the City would assist the residents of McConnell with their current sewage drainage and ponding issues is if the DEP acknowledged the situation and that the repairs are a temporary measure to resolve the issue. (Tr. at 85-86.)

27. The DEP will allow the current system in McConnell to be repaired and drain to the Guyandotte River as long as a utility is ordered to provide sewer service to the area in the future. (Tr. at 128-130; Staff Ex. 1.)

28. The City has accepted responsibility to sewer the McConnell area and is working toward securing funding for the project. (District Ex. 1; Tr. at 88-101.)

29. The residents of McConnell would need to assist in yearly maintenance of their current system, if a temporary solution is implemented. Community participation is also important if a long term solution is to occur. (Tr. at 98; 132; 160.)

30. CSX has already cleaned part of the ditch line in its right-of-way. (Tr. at 169.)

31. All parties agree a problem exists that presents a health hazard and needs addressed. (Tr. at 18; 27; 72; 83.)

CONCLUSIONS OF LAW

1. Since there is currently no funding available to install sewer in the McConnell area, a sewer project for the area is not economically feasible at this time.

2. Since the City agreed to provide sewer service to the McConnell area, it is reasonable to require the City to use its best efforts to secure financing for the project and provide sewer service to McConnell as soon as the funding is available.

3. In light of the severity of the sewer issues in McConnell, it is reasonable to require the City to file annual reports regarding its progress in securing financing and providing sewer service to area.

ORDER

IT IS, THEREFORE, ORDERED that the City of Logan Sanitary Board be, and hereby is, required to use its best efforts to secure reasonable financing, from whatever sources available, for a project to provide sewer service to McConnell as soon as the funding is available.

IT IS FURTHER ORDERED that the City of Logan Sanitary Board be, and hereby is, required to file annual progress reports, as closed entry filings, outlining its progress in obtaining financing, any work done toward the project, and a projected start date, if available.

IT IS FURTHER ORDERED that the Logan County Public Service District be dismissed as a party to the proceeding.

IT IS FURTHER ORDERED that this matter be dismissed and removed from the Commission's docket of open cases.

The Executive Secretary is ordered to serve a copy of this order upon the Commission by hand delivery, and by electronic service upon all parties of record who have filed an e-service agreement with the Commission and by United States Certified Mail, return receipt requested, upon all parties of record who have not filed an e-service agreement.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served the exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the fifteen (15) day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission.



K. B. Walker
Administrative Law Judge

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